



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0304]

RIN 1625-AA00

Safety Zones; Apra Outer Harbor and adjacent waters, Guam

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for underwater detonation operations in the waters of Apra Outer Harbor, Guam. This rule is effective from 10 a.m. until 4 p.m. on May 15, 2015 and May 21, 2015 (kilo, Local Time). The enforcement period for this rule is from 10 a.m. to 4 p.m. on May 15, 2015 and May 21, 2015. The Coast Guard believes this safety zone regulation is necessary to protect all persons and vessels that would otherwise transit or be within the affected area from possible safety hazards associated with underwater detonation operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 4 p.m. May 21, 2015 (kilo, Local Time). For the purposes of enforcement, actual notice will be used from 10 a.m. on May 15, 2015 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble are part of docket USCG-2015-0304. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2015-03XX in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. (EST), Monday through Friday, except Federal holidays. You may also visit the Coast Guard Sector Guam, Naval Base Guam, between 7:30 a.m. and 3:30 p.m. (Kilo, Local Time), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief, Kristina Gauthier, Sector Guam, U.S. Coast Guard; (671) 355-4866,

Kristina.m.gauthier@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard received notice of this operation on March 31, 2015, only 46 days before the operation is scheduled. Due to this late notice, the

Coast Guard did not have time to issue a notice of proposed rulemaking.

Under 5 U.S.C. 553(d)(3), for the same reason mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the late notice and inherent danger in underwater detonation exercises, delaying the effective period of this safety zone would be contrary to the public interest.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C 1231; 33 CFR 1.05-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1. A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety purposes.

The purpose of this rulemaking is to protect mariners from the potential hazards associated with a U.S. Navy training exercise which include detonation of underwater explosives. Approaching too close to such exercises could potentially expose the mariner to flying debris or other hazardous conditions.

C. Discussion of Rule

In order to protect the public from the hazards of the U.S. Navy training exercise, the Coast Guard is establishing a temporary safety zone, effective from 10 a.m. May 15, 2015 through 4 p.m. May 21, 2015 (Kilo, Local Time). The enforcement periods for this rule will be from 10 a.m. to 4 p.m. on May 15, 2015 and May 21, 2015.

The safety zone is located within the Guam COTP Zone (See 33 CFR 3.70-15), and will cover all waters bounded by a circle with a 700-yard radius for vessels persons in the water, centered at: 13° 27.700'N and 144° 38.500'E, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within safety zones is prohibited unless authorized by the COTP or a designated representative thereof. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce the zone. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone regulation is unnecessary or impractical for the purpose of maritime safety. Vessels or persons violating this rule may be

subject to the penalties set forth in 33 U.S.C. 1232 and/or 50 U.S.C. 192.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard expects the economic impact of this rule to be extremely minimal based on the short duration of the safety zone regulation and the limited geographic area affected by it.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small

entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through a portion of the zones from 10 a.m. through 4 p.m. on May 15, 2015 and May 21, 2015. This rule will be enforced for only 6 hours each day and vessel traffic can pass safely around the safety zone. The safety zone does not encompass the entire harbor and safe transit is still allowed to pass through, in and out of Apra Harbor. Further, traffic will be allowed to pass through the zones with the permission of the Coast Guard Patrol Commander 671-487-4817. Before the effective period, we will issue maritime advisories widely available to users of outer Apra Harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the

Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes,

on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a closed area of Apra Outer Harbor, to vessel traffic, for 6 hours on both May 15, 2015 and May 21, 2015. This rule is categorically excluded from further review under paragraph 34(g) of

Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0304 to read as follows:

§ 165. T14-0304 Safety Zones; Apra Outer Harbor and adjacent waters, Guam.

(a) Location. The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15),

from the surface of the water to the ocean floor, is a safety zone: Seven-hundred-yard-radius zone - All waters bounded by a circle with a 700-yard radius centered at 13° 27.700'N and 144° 38.500'E, (NAD 1983).

(b) Effective period. This section is effective from 10 a.m. on May 15, 2015 to 4 p.m. on May 21, 2015 (Kilo, Local Time).

(c) Enforcement periods. The safety zones described in paragraph (a) of this section will be enforced during the U.S. Navy underwater detonation operation, from 10 a.m. until 4 p.m. on May 15, 2015 and May 21, 2015 (Kilo, Local Time).

(d) Regulations. The general regulations governing safety zones contained in 33 CFR 165.23 apply. No vessels

may enter or transit the safety zone unless authorized by the COTP or a designated representative thereof.

(e) Enforcement. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce these temporary safety zones.

(f) Waiver. The COTP may waive any of the requirements of this section for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(g) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: April 30, 2015.

James B. Pruett,
Captain, U.S. Coast Guard,
Captain of the Port Guam

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